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New York, NY 10018  
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Attorneys for Defendant  
MARINE BULKHEADING, INC.

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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LEVEL 3 COMMUNICATIONS, L.L.C. and  
MCI COMMUNICATIONS SERVICES, INC.,  
d/b/a VERIZON BUSINESS,

**ECF CASE**

07 Civ. 8118 (GEL)

Plaintiffs,

- against -

MARINE BULKHEADING, INC.,

Defendant.  
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**ANSWER TO COMPLAINT**

Defendant MARINE BULKHEADING, INC. (hereinafter "MBI" or "Defendant"), by its attorneys Lyons & Flood, LLP, for its Answer to plaintiffs' Complaint alleges, upon information and belief, as follows:

1. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 1, 2, 4, 6, and 7 of the Complaint.

2. Admits that defendant MBI is a New York corporation with its principal place of business in Seaford, New York, but except as so specifically admitted herein, denies the remaining allegations contained in paragraph 3 of the Complaint.

3. Admits that the actions and omissions giving rise to this action occurred in this District, but except as so specifically admitted herein, denies the remaining allegations contained

in paragraph 5 of the Complaint.

**ANSWER TO FIRST CAUSE OF ACTION (Trespass)**

4. Repeats and realleges each and every allegation contained in paragraphs 1 through 3 of this Answer as if set forth at length herein.

5. Admits that on June 9, 2006, with full authority and permission, MBI drove I-beams into the ground at or near the northwest corner of the intersection of Greenwich Street and Hubert Street in New York City, but except as so specifically admitted herein, denies the remaining allegations contained in paragraph 9 of the Complaint.

6. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 10 and 11 of the Complaint.

7. Denies each and every allegation contained in paragraph 12 of the Complaint.

**ANSWER TO SECOND CAUSE OF ACTION (Negligence)**

8. Repeats and realleges each and every allegation contained in paragraphs 1 through 7 of this Answer as if set forth at length herein.

9. Denies each and every allegation contained in paragraphs 14 through 16 of the Complaint.

**FIRST AFFIRMATIVE DEFENSE**

10. The Complaint fails to state a claim upon which relief can be granted.

**SECOND AFFIRMATIVE DEFENSE**

11. Plaintiffs are not the real parties in interest and are not entitled to maintain this action in violation of Rule 17 of the Federal Rules of Civil Procedure.

**THIRD AFFIRMATIVE DEFENSE**

12. Defendant is not liable to plaintiffs as a result of any alleged trespass or other

intentional wrongful conduct or otherwise.

**FOURTH AFFIRMATIVE DEFENSE**

13. Defendant performed properly and in accordance with the governing contract and/or agreement.

**FIFTH AFFIRMATIVE DEFENSE**

14. Any past or future costs or expenses incurred, or to be incurred, by the plaintiffs for any economic loss that has been or may be replaced or indemnified in whole or in part, from a collateral source shall not be recoverable from the answering defendant and the amount of such damages will be diminished by the amount of the funds which plaintiffs have or may receive from such collateral source.

**SIXTH AFFIRMATIVE DEFENSE**

15. Plaintiffs have failed to mitigate reasonably their alleged damages.

**SEVENTH AFFIRMATIVE DEFENSE**

16. Plaintiffs have failed to join all necessary and indispensable parties.

**EIGHTH AFFIRMATIVE DEFENSE**

17. The damages complained of were caused in whole or part by the culpable conduct of others for whom the defendant has no legal responsibility.

**NINTH AFFIRMATIVE DEFENSE**

18. While defendant denies the plaintiffs' allegations of trespass and/or negligence, any damages, if proven, were the result of intervening and/or interceding acts of superseding negligence and liability on the part of parties over which the defendant neither has control nor has the right to control, and for which acts or omissions the defendant is not legally responsible.

**TENTH AFFIRMATIVE DEFENSE**

19. That if plaintiffs sustained the damages alleged in the Complaint, which are denied, same were wholly caused by the culpable conduct of plaintiffs.

**ELEVENTH AFFIRMATIVE DEFENSE**

20. That if plaintiffs sustained the damages alleged in the Complaint, which are denied, same were caused if not in whole then in part by the culpable conduct of plaintiffs, which should reduce any damages awarded to plaintiffs in proportion to plaintiffs' culpable conduct as determined at trial.

WHEREFORE, defendant MBI prays:

- a. that judgment be entered in favor of defendant MBI and against plaintiffs, dismissing the Complaint herein together with costs and disbursements of this action; and
- b. that judgment be entered in favor of defendant MBI for such other and further relief as the Court deems just and proper.

Dated: October 31, 2007

LYONS & FLOOD, LLP  
Attorneys for Defendant  
MARINE BULKHEADING, INC.

By: Kirk M. Lyons

Kirk M. Lyons (KL-1568)  
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**CERTIFICATE OF SERVICE**

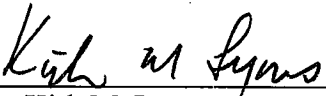
Kirk M. Lyons, an attorney duly admitted to practice before this Honorable Court, affirms on this 31<sup>st</sup> day of October 2007, I served true copies of the foregoing, by U.S. Mail, first-class postage pre-paid, to:

GIBBONS P.C.  
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Kirk M. Lyons